

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	Case No. 1:15-cv-13367-ADB
Plaintiff,	)	
	)	
v.	)	
	)	
MONICA TOTH,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF UNITED STATES OF AMERICA’S EXPLANATION OF PAYMENTS AND  
ACCRUALS FOR USE IN PREPARING AMENDED FINAL JUDGMENT**

Pursuant to the Court’s order dated November 3, 2020, the United States submits this explanation of payments that have been received and applied to the debt that is the subject matter of this action, and the late-payment and interest accruals that have accrued on the unpaid portion of the debt, for use in preparing an amended final judgment. We also submit a revised form of proposed judgment, which incorporates the calculations included with this explanation. The United States says:

1. Attached as Exhibit 1 to this explanation is a printout of a spreadsheet that reflects: 1) the assessment of \$2,173,703 that was made; 2) the payments that Monica Toth made that have been applied to that debt prior to the date that the Court granted the United States’ motion for summary judgment; 3) the interest and late-payment accruals that had accrued as of the time each payment was made; 4) the amount of the debt that existed as of Sept. 16, 2020, the date that the Court granted the United States’ motion for summary judgment and entered the initial judgment; 5) a payment of \$3,138,097.48 that Monica Toth made to the Justice Department on October 28, 2020; and 6) the amount due on the debt as of November 9, 2020, taking into account all prior payments.

2. Each date on the attached chart, except for the initial date, has above it a number reflecting the number of days elapsed since the prior date on the chart. That number of days has been used to calculate the interest and penalty accruals that are reflected in the corresponding row for that date.

3. Pre-judgment interest for the debt involved in this action accrues at the rate of 1% per year. 31 U.S.C. § 3717(a)(1); 77 Fed. Reg. 68886-03, 2012 WL 5561505. The late-payment penalty accrues at the rate of 6% per year. 37 U.S.C. § 3717(e)(2). Both accruals are simple accruals, *i.e.*, they are never compounded into the principal amount of the debt.

4. During years that do not have a Feb. 29 (non-leap years), the daily total accrual rate is  $1/365^{\text{th}}$  of the annual total accrual rate. During years that do have a Feb. 29 (leap years, *i.e.*, 2016 and 2020), the daily total accrual rate is  $1/366^{\text{th}}$  of the annual total accrual rate.

5. There were fifteen payments applied to the debt through offsets of payments otherwise due to Monica Toth from the United States: eight payments of \$80 each and seven payments of \$96 each. Each of the offset payments had deducted from it a \$15.00 charge incurred as part of the Treasury Offset Program.<sup>1</sup> The remaining amount of each offset payment was applied to the unpaid penalty accrual, pursuant to 31 C.F.R. § 901.9(f). The dates and amounts of these payments are identified on the attached chart.

6. As of September 16, 2020, the total amount due on the debt was \$3,208,2543.11, consisting of a principal balance of \$2,173,703, accrued interest of \$147,948.16, and accrued late-payment penalty of \$886,601.95.

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<sup>1</sup> Although Defendant has alleged that \$17 was deducted from each of the 15 offset overpayments (ECF No. 20-1), for a total of \$255, the IRS has told us that the correct amount of the offset charge is \$15 per offset overpayment, for a total charge of \$225. Thus, the attached chart has been prepared reflecting a \$15 charge per offset overpayment.

7. On October 28, 2020, Monica Toth made a payment of \$3,138,097 to the Justice Department. Although this payment, to the best of our knowledge, has not yet been posted onto the Treasury Department's computers, it is reflected in the attached spreadsheet, and the revised form of amended judgment submitted with this explanation.

8. As of November 9, 2020, the total remaining amount due on the debt is \$87,817.61, consisting of a principal balance of \$87,616.52, accrued interest of \$28.73, and accrued late payment penalty of \$172.36.

9. In our efforts to get a current debt figure so that Ms. Toth could make the October 28, 2020 payment identified above, we learned that the IRS had been using the assessment date of September 19, 2013, as opposed to the November 26, 2013 date that the initial demand letter was sent to Monica Toth, to calculate the initial start date for the commencement of the accruals. The attached chart reflects accruals starting on November 26, 2013, which is the correct date to be used for the start date of the accruals. Because the Declaration of Nancy M. Beasley submitted with the United States' motion for summary judgment (ECF No. 166-2) contains debt information calculated with an incorrect start date, we ask that the Court not consider it in considering the United States' motion to alter or amend the judgment. We also ask that the Court not use the form of amended final judgment (ECF No. 177-002) that was included with the United States' motion to alter or amend the judgment, as the numbers in that proposed judgment relied upon the previously submitted declaration.

10. Instead, included with this submission is a revised amended judgment, reflecting calculations that are consistent with the information contained in the attached chart.

11. All of calculations that are contained in the attached chart are calculations of addition, subtraction, or simple interest that can be performed by using a calculator. However, at

the Court's request, we can provide to the Court a copy of the underlying Excel spreadsheet that was used to create the chart. On Nov. 12, 2017, we provided a version of the underlying Excel spreadsheet to counsel for Monica Toth.

WHEREFORE, the United States moves for the entry of an amended final judgment, consistent with the form of judgment that is included with this explanation.

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney  
General

/s/ Thomas P. Cole

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and copies will be sent to those indicated as non-registered participants on Nov. 17, 2020

/s/ Thomas P. Cole

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